

Daniel H. Silverman (*pro hac vice pending*)
COHEN MILSTEIN SELLERS & TOLL PLLC
769 Centre Street, Suite 207
Boston, MA 02130
Telephone: (202) 408-4600
dsilverman@cohenmilstein.com
*Counsel for Plaintiffs Don Copeland, Joseph
Murray, Carol Smith, Patrick Whitney, Phillip
Hague, Denise Fotis, Roxann Doriott, Bruce Mims,
Lori Ably, Timothy Brown, Peter Costas, and Mike
Ballard
And Proposed Lead Counsel for Indirect Purchaser Class*

Sarah Grossman-Swenson (SBN 259792)
Kimberley C. Weber (SBN 302894)
MCCRACKEN STEMERMAN & HOLSBERRY
LLP
475 14th Street, Suite 1200
Oakland, CA 94612
(415) 597-7200
sgs@msh.law
kweber@msh.law

*Local Counsel for Plaintiffs
[Additional Counsel on Signature Page]*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DON COPELAND, JOSEPH MURRAY,
CAROL SMITH, PATRICK WHITNEY,
PHILLIP HAGUE, DENISE FOTIS,
ROXANN DORIOTT, BRUCE MIMS,
LORI ABLY, TIMOTHY BROWN,
PETER COSTAS, AND MIKE BALLARD,
on behalf of themselves and those similarly
situated,

Plaintiffs,

vs.

ENERGIZER HOLDINGS, INC.; AND
WAL-MART, INC.,

Defendants.

Case No. 4:23-cv-02087-HSG

**JOINT ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED; DECLARATION IN
SUPPORT;
[PROPOSED] ORDER**

[Civil L.R. 3-12 & 7-11]

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Pursuant to Civil Local Rule 3-12, Plaintiffs Don Copeland, Joseph Murray, Carol Smith, Patrick Whitney, Phillip Hague, Denise Fotis, Roxann Doriott, Bruce Mims, Lori Ably, Timothy Brown, Peter Costas, and Mike Ballard (“*Copeland* Plaintiffs”) hereby move to relate the following cases to this case:

(1) Title and Case Number of Each Apparently Related Case:

Portable Power, Inc. v. Energizer Holdings, Inc., et al.

Case No. 23-cv-02091-DMR

United States District Court of the Northern District of California

Kimberly Schuman, et al. v. Energizer Holdings, Inc., et al.

Case No. 23-cv-02093-BLF

United States District Court of the Northern District of California

(2) Brief Statement of the Relationship of the Actions

The three cases concern the same Defendants, transactions, and events. Plaintiffs in all three cases have alleged the same scheme between Energizer, the largest manufacturer of disposable batteries sold in the U.S., and Walmart, the largest retailer of disposable batteries in the U.S., to inflate both wholesale and retail prices for disposable batteries and disposable-battery-dominated lighting products (Battery Products) above competitive levels in violation of antitrust and consumer protection laws.

In the current action, the *Copeland* Plaintiffs have filed their claims on behalf of a class of indirect purchasers of Battery Products from retailers other than Walmart, while *Portable Power* has filed on behalf of a class of direct purchasers of Battery Products from Energizer, and the Schuman Plaintiffs have filed on behalf of a class of direct purchasers of Battery Products from Walmart. The cases will focus on the same conduct by Defendants, will involve many of the same factual and legal issues, and the discovery sought from Defendants is likely to be the same or very similar.

Thus, it appears likely that there will be an unduly burdensome duplication of labor and expense, as well as the potential for conflicting results, if the cases are conducted before different Judges.

1 **(3) Declaration regarding Stipulation**

2 Defendants have not yet appeared in this matter, and thus, Plaintiffs are unable to obtain
 3 their stipulation to relate the other cases, but counsel for both Defendants have indicated that
 4 they do not object to Plaintiffs' motion to relate the case. Silverman Dec. at ¶¶ 4-5. Counsel for
 5 Portable Power and the *Schuman* Plaintiffs also agree the other cases are related. *Id.* ¶ 6.

6
 7 Dated: May 16, 2023

Respectfully Submitted,

8 *I attest that each of the other signatories have*
 9 *concurred in the filing of this document.*

10 By: /s/Sarah Grossman-Swenson
 11 Sarah Grossman-Swenson (SBN 259792)
 12 Kimberley C. Weber (SBN 302894)
 13 MCCracken Stemerman & Holsberry
 14 LLP
 15 475 14th Street, Suite 1200
 16 Oakland, CA 94612
 17 (415) 597-7200
 18 sgs@msh.law
 19 kweber@msh.law

20 *Local Counsel for Copeland Plaintiffs*

21 Daniel H. Silverman (*pro hac vice pending*)
 22 Cohen Milstein Sellers & Toll PLLC
 23 769 Centre Street, Suite 207
 24 Boston, MA 02130
 25 Tel: (202) 408-4600
 26 Fax: (202) 408-4699
 27 dsilverman@cohenmilstein.com

28 Leonardo Chingcuanco (*pro hac vice forthcoming*)
 (SBN 308640)
 Cohen Milstein Sellers & Toll PLLC
 1100 New York Ave. NW, Fifth Floor
 Washington, DC 20005
 Tel: (202) 408-4600
 Fax: (202) 408-4699
 lchingcuanco@cohenmilstein.com

*Counsel for Copeland Plaintiffs and Proposed Lead
 Counsel for Indirect Purchaser Class*

/s/Matthew S. Weiler
 Todd M. Schneider (SBN 158253)
 Jason H. Kim (SBN 220279)
 Matthew S. Weiler (SBN 236052)

1 Mahzad K. Hite (SBN 283043)
2 SCHNEIDER WALLACE
3 COTTRELL KONECKY LLP
4 2000 Powell Street
5 Suite 1400
6 Emeryville, CA 94608
7 Telephone: (415) 421-7100
8 TSchneider@schneiderwallace.com
9 Jkim@schneiderwallace.com
10 Mweiler@schneiderwallace.com
11 Mhite@schneiderwallace.com

12 /s/Joshua P. Davis
13 Joshua P. Davis (SBN 193254)
14 Julie A. Pollock (SBN 346081)
15 BERGER MONTAGUE PC
16 505 Montgomery St., Ste. 625
17 San Francisco, CA 94111
18 Telephone: (800) 424-6690
19 jdavis@bm.net
20 jpollock@bm.net

21 Michael Dell'Angelo (*Pro Hac Vice*)
22 BERGER MONTAGUE PC
23 1818 Market St., Ste. 3600
24 Philadelphia, PA 19103
25 Telephone: (215) 875-3000
26 mdellangelo@bm.net

27 /s/Kyla J. Gibboney
28 Rosemary M. Rivas (SBN 209147)
Kyla J. Gibboney (SBN 301441)
GIBBS LAW GROUP LLP
1111 Broadway, Suite 2100
Oakland, California 94607
Telephone: (510) 350-9700
rmr@classlawgroup.com
kjg@classlawgroup.com

*Counsel for Plaintiffs Portable Power, Inc., and the
Proposed Direct Purchaser Wholesale Classes
Counsel for Plaintiffs Schuman, Kelly, and the
Proposed Direct Purchaser Retail Classes*

DECLARATION OF DANIEL H. SILVERMAN

I, DANIEL H. SILVERMAN, declare as follows:

1. I am a Partner at Cohen Milstein Sellers & Toll, PLLC. I am admitted to practice law in the District of Columbia and in Massachusetts. I am awaiting *pro hac vice* admission in this matter. Based on personal knowledge of the matters stated herein, if called upon, I could and would competently testify thereto. I submit this declaration in support of Plaintiffs' Joint Administrative Motion To Consider Whether Cases Should Be Related.

2. The Complaint in this matter has not yet been served on Defendants.

3. Counsel for Defendants have not yet made an appearance in this matter.

4. On May 15, 2023, I received an email from Samuel Liversidge, counsel for Defendant Energizer Holdings, Inc. The email copied counsel for Defendant Walmart, Inc.

5. The email from Mr. Liversidge stated that Defendants do not oppose Plaintiffs administrative motion to relate the *Portable Power* and *Schuman* cases to the *Copeland* case.

6. I have spoken with counsel for *Portable Power* and the *Schuman* plaintiffs, and they have stated that they do not oppose *Copeland* Plaintiffs' administrative motion to relate the *Portable Power* and *Schuman* cases to the *Copeland* case.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: May 16, 2023

/s/ Daniel H. Silverman

DANIEL H. SILVERMAN

[PROPOSED] ORDER

IT IS SO ORDERED.

Dated: _____, 2023.

HAYWOOD S. GILLIAM, JR.
United States District Judge